

RESOLUTION NO. 92-134
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A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING EXECUTION OF THE
SEATTLE CITY LIGHT
CAPACITY AND ENERGY EXCHANGE
THIRD-PHASE AGREEMENT

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WHEREAS, Northern California Power Agency (NCPA), of which Lodi is a participant, has found that it would be economical for its participating members to seasonally exchange capacity and energy with a Pacific Northwest utility; and

WHEREAS, Seattle City Light (SCL) is a department of the City of Seattle, a Washington State municipal corporation that operates a winter peaking electric utility system composed primarily of hydroelectric generating plants; and

WHEREAS, the City of Lodi operates a summer peaking electric system which has need for Firm Capacity and Associated Energy during the summer peaking season and excess Firm Capacity during the winter season; and

WHEREAS, the SCL Capacity and Energy Exchange Agreement (Agreement) would provide an opportunity for Lodi to meet its Firm Capacity requirements through the year 2005; and

WHEREAS, the exchange detailed in the Agreement provides for Firm Capacity and Associated Energy to be supplied by SCL during the summer season to the NCPA Participants with the expectation that NCPA Participants would return the Firm Capacity and Associated Energy to SCL during the following winter season; and

WHEREAS, the capacity exchange is, in both seasons, derived from surplus availability thus making better use of each utility's resources and is not expected to result in any cost obligation by the parties; and

WHEREAS, NCPA Participants must return 20 percent more energy in the winter season than received in the summer season; and

WHEREAS, the 49MW highly efficient combustion turbine generation facility to be located in Lodi has the base load generating capability of producing the required energy during the winter season, which is a more efficient period for its operation (turbine efficiency increases during the cooler weather); and

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August 5, 1992
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WHEREAS, NCPA Counsel and the NCPA Commission have reviewed the Agreement and recommend its approval by the participants; and

WHEREAS, the Electric Department's review of this matter indicates that the participation level should be 41.667 percent, which translates into approximately 30 megawatts of Firm Capacity.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes a 41.667 percent participation in the Agreement.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute the Agreement.

Dated: August 5, 1992

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I hereby certify that Resolution No. 92-134 was passed and adopted by the Lodi City Council in a regular meeting held August 5, 1992 by the following vote:

Ayes: Council Members - Hinchman, Pennino, Sieglock, Snider
and Pinkerton (Mayor)

Noes: Council Members - None

Absent: Council Members - None


Alice M. Reincke
City Clerk

**SEATTLE CITY LIGHT
CAPACITY AND ENERGY EXCHANGE
THIRD PHASE AGREEMENT**

This Agreement, dated as of August 5, 1992, by and among the Northern California Power Agency, a joint powers agency of the State of California (NCPA) and the members of NCPA which have executed this Agreement (Participant or Participants), is entered into on the basis of the following.

Recitals:

- A. NCPA's Resource Plan shows that it would be economical for NCPA and its participating members to seasonally exchange capacity and energy with a Pacific Northwest utility.
- B. NCPA has therefore entered into the Seattle City Light/NCPA Capacity and Energy Exchange Agreement, dated _____, 1992 (Exchange Agreement) under which it will exchange capacity and energy with Seattle City Light (SCL) conditioned upon NCPA and SCL becoming interconnected through the California-Oregon Transmission Project and the Third AC transmission system.
- C. SCL is a department of the City of Seattle, a Washington municipal corporation that operates a winter peaking electric utility system composed primarily of hydroelectric generating plants together with some thermal electric generating plants.
- C. NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Exchange Agreement.

NOW THEREFORE, NCPA and the Participants hereby enter into this Agreement

Execution Counterpart

Section 1. Definitions. The following terms shall, when used in this Agreement, have the following meanings:

1.1 "Associated Energy" means the energy associated with the Firm Capacity made available by the delivering party pursuant to the Exchange Agreement.

1.2 "Exchange Agreement" means the agreement between NCPA and SCL referred to in the second recital hereinabove.

1.3 "Firm Capacity" means the capacity made available by the delivering party to the receiving party pursuant to the Exchange Agreement.

1.4 "Participant" means an NCPA member which has executed this Agreement and a Participant's successor in interest.

1.5 "Participation Percentage" means, with respect to each Participant, the percentage of the total capacity and associated energy of the Project to which such Participant is entitled pursuant to the terms of this Agreement. The Participation Percentage for each Participant shall be the percentage set forth opposite the name of such Participant in Appendix A hereto, as such Appendix A may be amended from time to time in accordance with this Agreement.

1.6 "Project" means the exchange of capacity and energy pursuant to the Exchange Agreement and any amendments thereto.

Section 2. Purpose. The purpose of this Agreement is: (i) to provide for the delivery by NCPA and the acceptance by the Participants of the Firm Capacity and Associated Energy received by NCPA from SCL under the Exchange Agreement, (ii) to provide for the making available of Firm Capacity and Associated Energy by Participants that is to be delivered by NCPA to SCL under the Exchange Agreement, (iii) to authorize NCPA as agent for the Participants to engage in activities related to that basic purpose and (iv) to specify the rights and obligations of NCPA and of the Participants with respect to the Project.

Section 3. Firm Capacity and Associated Energy.

3.1 NCPA will make all reasonable efforts to make available to each Participant a portion of the total Firm Capacity and Associated Energy provided by SCL to NCPA under the Exchange Agreement equal to the product of the Participation Percentage of that Participant and the total Firm Capacity and Associated Energy provided by SCL to NCPA under the Exchange Agreement. NCPA will make such Firm Capacity and Associated Energy, less transmission losses, available at a point on or adjacent to the electric system of the Participant, reasonably well adapted to the ability of such participant to utilize the power. Furthermore, NCPA will make all reasonable efforts to arrange for transmission of such power over the lines of others, and for additional power required from others as reserves against planned or emergency service interruptions.

3.2 Each Participant will make available to NCPA Firm Capacity and Associated Energy, as those terms are defined in the Exchange Agreement, sufficient to enable NCPA, after transmission losses, to provide SCL, at the Point of Delivery specified in the Exchange Agreement, with Firm Capacity and Associated Energy in amounts equal to the product of the Participation Percentage of that Participant and the total Firm Capacity and Associated Energy to be provided by NCPA to SCL under the Exchange Agreement. To the extent any Participant fails to make available Firm Capacity and Associated Energy to NCPA for purposes of fulfilling NCPA's obligation to SCL under the Exchange Agreement, NCPA shall procure the necessary Firm Capacity and Associated Energy and bill such Participant to recover all costs attributable to such procurement.

3.3 Each Participant shall make available to NCPA such transmission capability on the COTP as is necessary for NCPA to meet (i) NCPA's obligations to SCL under the Exchange Agreement, and (ii) NCPA's obligation to the Participants under this Agreement. To the extent any Participant fails to make available sufficient transmission capability to NCPA for purposes of fulfilling NCPA's obligations under the Exchange Agreement, NCPA may procure the necessary transmission capability and will bill such Participant to recover all costs attributable to such procurement.

Section 4. Related NCPA Activities. NCPA may engage in other activities intended to enable the Participants to (i) utilize the Firm Capacity and Associated Energy provided by SCL to NCPA as efficiently and economically as possible and (ii) make available the Firm Capacity and Associated Energy provided by NCPA to SCL as efficiently and economically as possible. NCPA shall exercise the authority granted to it by this section in accordance with the provisions of section 10 of this Agreement.

Section 5. NCPA Project Expenses. The Participants recognize that NCPA will incur certain expenses, including but not limited to charges for transmission services, as the result of administering this Agreement and the Exchange Agreement, and carrying out any related activities in which it may be directed to engage pursuant to Section 4 of this Agreement. The Participants agree that NCPA may budget and bill for such expenses pursuant to Section 6 of this Agreement.

Section 6. Budget and Billing Statements.

6.1 Prior to the beginning of each NCPA fiscal year for which no budget has been adopted, the NCPA Commission will adopt a budget for such fiscal year or years for costs and expenses relating to the Project. The NCPA Commission may adopt budgets for more than one fiscal year. The budget shall include the following two categories of costs and expenses: (a) the charges that NCPA estimates that it will incur to deliver Firm Capacity and Associated Energy to SCL, and (b) all other costs and expenses reasonably related to the Project. NCPA shall promptly give notice to each Participant of its projected share of such categories of costs and expenses.

6.2 Monthly billing statements prepared by NCPA shall be sent to each Participant showing the Participant's share of costs and other charges payable pursuant to this Agreement for each billing period. Such statements shall separately set forth any credit or debit adjustments.

6.3 Amounts shown on each billing statement are due and payable thirty (30) days after the date of the billing statement except that any amount due on a Friday, holiday or weekend may be paid on the closest following workday.

6.4 Any amounts due and not paid by a Participant shall bear interest from the due date until paid at the annual rate established by the Commission of NCPA at the time of adoption of the then most recent budget. If a Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount which may be due the Participant which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Participant fail to agree on the correctness of a bill within thirty (30) days after the Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 *et seq.* of the California Code of Civil Procedure.

Section 7. Obligations in the Event of Default.

7.1 Upon failure of any Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Participant, and if payment is not made within 30 days from the date of such demand, the failure to make payment shall constitute a default.

7.2 Upon the default of any Participant, NCPA (a) may terminate the provisions of this Agreement insofar as the Agreement entitles the defaulting Participant to its Participation Percentage of Project capacity and energy, and (b) shall use its best efforts to sell and transfer for the Participant's account all or a portion of the Participant's Participation Percentage of Project capacity and energy. When making such sales and transfers, NCPA shall allow all Participants and then other NCPA member entities the same rights of first refusal that are provided for in section 8 of this Agreement. Notwithstanding such sale, transfer or termination, the obligations of the defaulting Participant under this Agreement shall continue in full force and effect except that such obligations shall be discharged to the extent that NCPA receives payment from a purchaser or transferee of the defaulting Participant's Participation Percentage in Project capacity and energy.

7.3 Upon the default of any Participant, and except as transfers are made pursuant to section 8, (i) the Participation Percentage of each nondefaulting Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Participants, and (ii) the defaulting Participant's Participation Percentage in the output of the Project capacity and energy shall (but only for purposes of computing the respective Participation Percentages of the nondefaulting Participants) be reduced correspondingly. The fact that other Participants have increased their obligations to NCPA according to this section shall not relieve the defaulting Participant of its liability under this Agreement, and any Participant increasing its obligation shall have a right of recovery from the defaulting Participant to the extent of its increase in obligation.

Section 8. Transfers of Rights by Participants.

8.1 A Participant has the right to make transfers, sales, assignments and exchanges (collectively "transfer(s)") of Project capacity, energy and rights thereto. If a Participant desires to transfer a portion or its entire share of the Project for a specific time interval, or permanently, NCPA will, if requested by such Participant, use its best efforts to transfer that portion of the Participant's share of the Project.

8.2 Before NCPA may transfer an excess Project share pursuant to section 8.1 to any person or entity other than a Participant, it shall give all Participants the right to purchase the share on the same terms and conditions. Before NCPA may transfer an excess Project share pursuant to section 8.1 to any person or entity other than an NCPA member, it shall give all NCPA members the right to purchase the share on the same terms and conditions. Such right shall be exercised within thirty (30) days of receipt of notice of said right.

8.3 No transfer shall relieve a Participant of any of its obligations under this Agreement except to the extent that NCPA receives payment of these obligations from a transferee.

Section 9. Withdrawal by Participants. No Participant may withdraw from this Agreement. However, NCPA will use its best efforts to assist any Participant that wishes to transfer all or any portion of its rights pursuant to section 8 above.

Section 10. NCPA Governance of the Project.

10.1 Commission Meetings. Actions of the NCPA Commission relating to this Agreement or to the Project shall be taken at regular or special meetings of the NCPA Commission but shall be participated in only by those Commissioners, or their designated alternates, who represent Participants.

10.2 Quorum. A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Agreement or to the Project shall consist of Commissioners, or their designated Alternates, representing at least two Participants having a combined majority in interest based on Participation Percentages.

10.3 Voting. Voting by representatives of Participants on matters relating to this Agreement or to the Project shall be on a one member/one vote basis, with a majority vote required for action; however, upon request of any Participant representative, the voting on an issue shall be by Participation Percentage with a 65% or more favorable vote necessary to carry the action. The 65% required by the preceding sentence shall be reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but shall not be reduced below a majority in interest.

10.4. Review of Voting. Any decision related to this Agreement or to the Project taken by the affirmative vote of Participants holding Participation Percentages of less than 65% can be reviewed and revised if a Participant gives notice of intention to seek such review and revision to each of the other Participants within ten days after receiving written notice of such action. If such notice of intention to seek review is given, any action taken specified in the notice shall be nullified unless the authorized representatives of Participants holding at least 65% of the total Participation Percentages vote in favor thereof at a regular or specially called meeting of the NCPA Commission. The 65% required by the preceding sentence shall be

reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but shall not be reduced below a majority in interest.

Section 11. Voting on Termination of the Exchange Agreement. Section 2.2.1 of the Exchange Agreement provides that the Agreement shall continue to be in effect until notice of termination is provided at least seven years in advance of termination, provided that termination shall not occur prior to May 31, 2014. Accordingly, on or before April 30 of each year beginning in 2007, the representative of any Participant may request a vote of the Commission as to whether a notice to terminate the Exchange Agreement shall be issued before May 31 of that year. A notice to terminate shall not be issued unless a request for a vote on termination is made by a Participant, Notwithstanding any other provision of this Agreement, such a notice shall be issued if the representatives of the Participants fail to unanimously vote not to issue the notice of termination, unless on or before May 31 of that year the rights of all Participants who have voted to issue the notice of termination are transferred, pursuant to section 8 of this Agreement, to entities that have agreed to assume the obligations of those Participants.

Section 12. Term and Termination. This Agreement shall not take effect until it has been executed and delivered to NCPA by Participants, whose Participation Percentages, in the aggregate, shall equal at least 80 percent. The NCPA members listed on Appendix A shall have 45 days following written notice of the effective date to execute and deliver counterparts of this Agreement to NCPA. If any NCPA member listed on Appendix A fails to execute and deliver this Agreement within such 45 days, unless otherwise provided by the Participants, the Participating Percentages of such member or members shall be spread among the Participants in proportion to their Participation Percentages. The term of this Agreement shall continue until the expiration of the Exchange Agreement. This Agreement shall not be subject to termination prior to the expiration of its term by any party under any circumstances, whether based upon the default of any other party under this Agreement or otherwise, except as specifically provided herein.

Section 13. Member Service Agreement. This Agreement is a service schedule and a third phase agreement and shall be deemed incorporated into the Member

Service Agreement that each Participant has executed or successor agreement to the Member Service Agreement. This Agreement shall be construed as constituting the more specific terms governing the general relationship between the parties set out in that Member Service Agreement.

Section 14. Several Obligation. No Participant shall be liable under this Agreement for the obligations of any other Participant, except as provided in section 7 of this Agreement. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties. The obligation of each Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Participants, except as provided in section 7 of this Agreement.

Section 15. Amendments. This Agreement may be amended only by a written instrument executed by NCPA and the Participants or their successors with the same formality as this Agreement.

Section 16. Severability. In the event that any of the terms, covenants or conditions of this Agreement shall be held invalid, NCPA and the Participants intend that all other terms, covenants and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 17. Governing Law. This Agreement shall be interpreted, governed by and construed under the laws of the State of California.

Section 18. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 19. Headings. The headings to the sections in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 20. Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Participant or to NCPA shall be given in writing and shall either be personally delivered to the Participant or transmitted to the Participant by regular mail at the address designated by the Participant. The designation of such address may be changed at any time by written notice.

Section 21. No Waivers. No waiver of performance under this Agreement shall be effective unless given by the Commission. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance.

Section 22. Warranty of Authority. Each Participant which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all of the terms, covenants and conditions of this Agreement and has acted with all of the requisite capacity and authority and the approval of its governing body.

In witness whereof, each Participant has, by the signature of its duly authorized representatives shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA
POWER AGENCY

CITY OF HEALDSBURG

By: _____

Attest: _____

Date: _____

By: _____

Date: _____

CITY OF LODI

CITY OF PALO ALTO

Attest: Alice M. Reimche
City Clerk, Alice M. Reimche

Attest: _____

By: Thomas A. Peterson
City Manager, Thomas A. Peterson

By: _____

Date: 8/6/92

Date: _____

CITY OF ROSEVILLE

CITY OF UKIAH

Attest: _____

Attest: _____

By: _____

By: _____

Date: _____

Date: _____

APPENDIX A

NCPA/SCL CAPACITY AND ENERGY EXCHANGE
THIRD PHASE AGREEMENT

PARTICIPATION PERCENTAGES AND MEGAWATTS

MEMBER	PERCENT	MEGAWATTS
Healdsburg	2.667	1.6
Lodi	41.667	25.0
Palo Alto	18.333	11.0
Roseville	33.333	20.0
Ukiah	4.000	2.4
Total	100.000	60.0

CAPACITY AND ENERGY EXCHANGE AGREEMENT
BETWEEN
THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT
AND
NORTHERN CALIFORNIA POWER AGENCY

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CAPACITY AND ENERGY EXCHANGE AGREEMENT

BETWEEN

THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT

AND

NORTHERN CALIFORNIA POWER AGENCY

THIS AGREEMENT, entered into as of this _____ day of _____ by and between THE CITY OF SEATTLE, CITY LIGHT DEPARTMENT ("Seattle"), a department of the City of Seattle, a Washington municipal corporation, and NORTHERN CALIFORNIA POWER AGENCY ("NCPA"), a California Joint Powers Agency with its principal offices in Roseville, California.

WITNESSETH:

WHEREAS, NCPA operates a summer peaking electric utility system composed primarily of hydroelectric generating plants together with some geothermal electric generating plants and combustion turbines; and

WHEREAS, Seattle operates a winter peaking electric utility system composed primarily of hydroelectric generating plants together with some thermal electric generating plants; and

WHEREAS, NCPA has electric power available during the winter months which it is willing to make available to Seattle in return for electric power in the summer months; and

WHEREAS, Seattle has electric power available during the summer months which it is willing to make available to NCPA in return for electric power in the winter months; and

WHEREAS, NCPA and Seattle are expected to be interconnected through the California-Oregon Transmission Project and the Third AC transmission systems, and

WHEREAS, it is the intent of both Seattle and NCPA that both Parties receive benefits from the seasonal exchange of electric power;

NOW, THEREFORE, in consideration of the mutual benefits to the Parties, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used herein:

1.1 Agreement

Shall mean this Capacity and Energy Exchange Agreement between Seattle and NCPA.

1.2 Associated Energy

Shall mean energy associated with the Firm Capacity made available by the Delivering Party on the demand of the Receiving Party under this Agreement as described in Section 3.

1.3 Authorized Representative

The individual specified pursuant to Article VI who is authorized to issue formal notices pursuant to Section 10.1.

1.4 BPA

Shall mean the Bonneville Power Administration.

1.5 Contract Year

Shall mean each consecutive twelve month period during the term of this Agreement beginning at 0001 hours Pacific Time on June 1 and ending at 2400 hours on the next May 31.

1.6 COTP

Shall mean the California-Oregon Transmission Project.

1.7 Delivering Party

Shall mean Seattle during periods when Seattle is obligated to provide the services described in Section 3.1 and shall mean NCPA during periods when NCPA is obligated to provide the services described in Section 3.2.

1.8 Firm Capacity

Shall mean the capacity made available by the Delivering Party to the Receiving Party under this Agreement as described in Section 3 which shall be supported by all the resources available to the Delivering Party.

1.9 Good Utility Practice

Shall mean those practices, methods and equipment, including levels of services and provisions for contingencies, as modified from time to time, that are at least as good as those commonly used in the western United States to operate, reliably and safely, electric power facilities to serve a utility's own customers dependably and economically, with due regard for the conservation of natural resources and the protection of the environment of the service area.

1.10 Party

Shall mean Seattle or NCPA; collectively, Parties.

1.11 Point of Delivery

Shall be as defined in Section 4.3.

1.12 Receiving Party

Shall mean NCPA during periods when NCPA is entitled to receive the services described in Section 3.1 and shall mean Seattle during periods when Seattle is entitled to receive the services described in Section 3.2.

1.13 Third AC Intertie

Shall mean the new AC transmission line under construction between the Pacific Northwest and the California - Oregon border.

1.14 Third Party

Shall mean a person or entity other than Seattle or NCPA.

1.15 Uncontrollable Forces

Shall mean any cause or causes that are beyond the control of the Party and which render that Party unable to perform an obligation under this Agreement, and which by the exercise of due diligence such Party could not reasonably have been expected to avoid, and which by due diligence it is unable to overcome.

ARTICLE II

TERM

2.1 Effective Date

This Agreement shall become effective on the date signed by both Parties.

2.2 Termination

2.2.1 Termination Notice. Except as otherwise provided herein, this Agreement may be terminated by either Party with at least seven years advance written notice, but in no event shall termination take effect prior to May 31, 2014 or May 31st of any year thereafter. Once a notice to terminate is given, it may not be revoked without the written consent of the other Party.

2.2.2 Unavailable or Unacceptable Transmission Service. This Agreement may be terminated by either Party with at least thirty days advance written notice if any of the following conditions fails to be fulfilled by June 1, 1995:

- a. The COTP is energized and commercially operable;
- b. The Third AC Intertie is energized and commercially operable;
- c. Seattle has entered into a capacity ownership contract with BPA for an ownership interest in the Third AC Intertie of sufficient size to satisfy the transmission requirements of this Agreement,
- d. Each Party has stipulated in writing that it is satisfied that the agreement(s) the other Party has provided pursuant to Section 4.4 provides the other Party with transmission capability sufficient to meet the other Party's obligations under this Agreement.

2.3 All obligations under this Agreement shall be preserved until satisfied.

ARTICLE III

CAPACITY AND ENERGY EXCHANGE

3.1 Services Provided by Seattle

Seattle shall make Firm Capacity and Associated Energy available to NCPA at the Point of Delivery in the amounts and for the periods as follows:

<u>Month</u>	<u>Rate of Delivery</u>	<u>Maximum Energy/Day</u>	<u>Maximum Energy/Month</u>
June	60 MW	720 MWh	21,600 MWh
July	60 MW	720 MWh	22,320 MWh
Aug.	60 MW	460 MWh	14,260 MWh
Sept.	60 MW	720 MWh	21,600 MWh
Oct. 1-15	60 MW	720 MWh	10,800 MWh

- 3.1.1 Deliveries to NCPA shall be made first, beginning on June 1 immediately following the date that provisions (a) through (d) of Section 2.2.2 are fulfilled, and continuing each Contract Year until this Agreement is terminated.
- 3.1.2 The total Associated Energy delivery by Seattle to NCPA shall be 90,580 MWh during the period June 1 through October 15 of each contract year.
- 3.1.3 Energy delivered by Seattle to NCPA in August shall be delivered only during the period 0801 through 2200 hours, Monday through Sunday, or as otherwise agreed by the Parties' schedulers or dispatchers at the time of delivery.

3.2 Services Provided by NCPA

- 3.2.1 NCPA shall make available to Seattle Firm Capacity and Associated Energy at the Point of Delivery during August or November, at Seattle's option, in the amounts and for the periods as follows:
 - 3.2.1.1 During the period 2201 through 0800 hours, Monday through Sunday in August, NCPA shall make available to Seattle Firm Capacity in the amount of 46 MW and Associated Energy in an amount not to exceed 460 MWh per day and 14,260 MWh for the month.
 - 3.2.1.2 During the period November 15 through November 30, NCPA shall make available to Seattle Firm Capacity in the amount of 46 MW and Associated Energy in an amount not to exceed 1,104 MWh per day and 17,112 MWh for the period, provided that no Associated Energy was delivered to Seattle in August of that calendar year.
 - 3.2.1.3 Any delivery of Associated Energy to Seattle in August shall cause the maximum Associated Energy available to Seattle from November 15 through November 30 to be reduced to

14,260 MWh minus the quantity of Associated Energy delivered in August of that calendar year.

- 3.2.2 NCPA shall make Firm Capacity and Associated Energy available to Seattle at the Point of Delivery in the amounts and for the periods as follows:

<u>Month</u>	<u>Rate of Delivery</u>	<u>Maximum Energy/Day</u>	<u>Maximum Energy/Month</u>
Dec.	46 MW	720 MWh	22,320 MWh
Jan.	46 MW	720 MWh	22,320 MWh
Feb.	46 MW	720 MWh	20,160 MWh
Mar.	46 MW	720 MWh	22,320 MWh
Apr.	12 MW	148 MWh	4,464 MWh

- 3.2.3 Except as provided in Section 3.2.1.1, deliveries to Seattle shall commence on November 15 immediately following the completion of initial deliveries to NCPA, and shall continue each Contract Year until this Agreement is terminated.
- 3.2.4 The maximum total Associated Energy delivery to Seattle by NCPA shall be 108,696 MWh during the period November 15 through April 30, except as provided in Section 3.2.1.3.

3.3 Fulfillment of Obligations

A decision by one Party not to take delivery of any or all the energy to which it is entitled under this Agreement in one Contract Year shall not relieve that Party from the obligation to deliver all the energy to which the other Party is entitled in a Contract Year.

3.4 Continuity of Service

Firm Capacity and Associated Energy is intended to be available to the Receiving Party at the times and in the amounts provided under this Agreement. In order to achieve that degree of availability, the Delivering Party shall provide adequate capacity and spinning reserves and prime-mover energy and sufficient transmission to move such power to the Points of Delivery subject to Section 4.4, and consistent with Good Utility Practices.

ARTICLE IV

OPERATIONS

4.1 Schedules

All energy deliveries shall be scheduled as follows:

- 4.1.1 Establishing Pre-Schedules The Receiving Party shall notify the Delivering Party of the hourly amounts of energy to be scheduled for delivery during the next day or days. This notification shall occur before 1000 hours Pacific Time on the last regular work day recognized by both Parties before the delivery is scheduled to begin. The pre-schedule may be revised at any time subject to agreement of the Parties' dispatchers or schedulers.
- 4.1.2 Scheduling Practices The Parties shall schedule in accordance with Good Utility Practice and with the Western Systems Coordinating Council scheduling practices in effect at the time schedules are made, and in accordance with the transmission requirements of Section 4.4.
- 4.1.3 Ramping Rates The amount of change in scheduled energy between hours shall not exceed 25 MW per hour, unless otherwise mutually agreed.
- 4.1.4 Cashing Out During any month, a Receiving Party may offer to sell energy to the Delivering Party that would otherwise be available under this agreement to the Receiving Party, which offer the Delivering Party may freely accept or reject. Any delivery of energy in excess of the amounts in this Agreement, as detailed in Article III, or outside of the months described in Article III will be made under separate agreement.

4.2 Uncontrollable Forces

In the event of Uncontrollable Forces, the Parties agree to cooperate in taking necessary and appropriate action, including changing schedules. Any scheduled energy that is not delivered due to Uncontrollable Forces will be rescheduled and delivered during like hours, as soon as system capabilities allow and as mutually agreed by the Parties' dispatchers or schedulers, or, if this is not possible, will result in a pro rata reduction of energy for all months of return. An Uncontrollable Force that results in the permanent loss of the transmission path between the two Parties' systems as obtained pursuant to Section 4.4, shall relieve both Parties of their obligations under this Agreement, after any Associated Energy not delivered pursuant to Article III has been cashed out.

4.3 Points of Delivery

- 4.3.1 Deliveries to Seattle The Points of Delivery for deliveries to Seattle by NCPA shall be at the point where the transmission lines of the Pacific Northwest - Pacific Southwest AC Intertie cross the California-Oregon border ("Border").
- 4.3.2 Deliveries to NCPA The Point of Delivery for deliveries to NCPA by Seattle shall be at the point where the transmission lines of the Pacific Northwest - Pacific Southwest AC Intertie cross the California-Oregon border ("Border").
- 4.3.3 Deliveries of energy pursuant to this Agreement may be made at alternate Points of Delivery subject to agreement between the Parties' schedulers or dispatchers. The Parties agree that reimbursement of costs to accommodate delivery of energy to an alternate Point of Delivery may be necessary. Any cost to be billed for the delivery of power to an alternate Point of Delivery shall be agreed upon in advance of the transaction by the Parties' schedulers or dispatchers.

4.4 Third Party Transmission

The Parties recognize that their ability to provide the services described in Article III will require that each of them obtain transmission capacity from Third Parties. Each Party therefore agrees to use its best efforts to obtain such contractual transmission capacity in an amount not less than 110 percent of its maximum obligation to deliver Firm Capacity pursuant to Article III. Each Party further agrees that the other Party shall not be required to obtain such contractual transmission capacity in any greater amount. If despite best efforts either Party is unable to obtain from Third Parties, or to maintain, sufficient transmission service to meet its obligations under this Agreement, either Party may request a meeting at which the Parties shall attempt to renegotiate the terms and conditions of this Agreement.

Each Party shall promptly provide the other Party with any contract with a Third Party for transmission service necessary to meet its obligation under this Agreement.

The Parties also recognize that operational problems may limit a Party's ability to utilize Third Party transmission to provide Firm Capacity and Associated Energy in accordance with Article III. The Parties therefore agree that the obligation of either Party to provide such Firm Capacity and Associated Energy shall be limited to that which can be transmitted over the operational transmission capacity that is available from Third Parties and is in place at any particular time.

4.5 Transmission Charges

Except as provided in Section 4.3, Seattle shall be responsible for all transmission charges incurred for transmission services required to provide or receive service under this Agreement north of the California-Oregon border. Except as provided in Section 4.3, NCPA shall be responsible for all transmission charges incurred for transmission services required to provide or receive services under this Agreement south of the California-Oregon border.

4.6 Transmission Losses

Seattle shall be responsible for all transmission losses incurred for transmission services required to provide or receive service under this Agreement north of the California-Oregon border. NCPA shall be responsible for all transmission losses incurred for transmission services required to provide or receive service under this agreement south of the California-Oregon border.

ARTICLE V

SETTLEMENTS

- 5.1 A Party may bill the other Party for the recovery of costs incurred as a result of delivering power to an alternate Point of Delivery pursuant to Section 4.3.3.
- 5.2 Payments for cashing out pursuant to Section 4.1.4 shall be made pursuant to this Article V.
- 5.3 Except as provided in Sections 5.1 and 5.2, no other payments are to be made to either Party for the performance of obligations under this Agreement.
- 5.4 All power transactions hereunder shall be accounted for on the basis of scheduled hourly quantities. All dispatchers involved in the transactions shall maintain records of hourly schedules for accounting and operating purposes.
- 5.5 The accounting period for transactions hereunder shall be one calendar month.
- 5.6 On or before the 10th day of the month following a month in which transactions occur, the Party incurring costs pursuant to Section 4.3.3 shall render a bill to the other Party for such transactions. Parties shall pay bills on or before the later of (i) the 25th day of the month or (ii) the 20th day following receipt of the bill. Amounts which are not paid on or before the due date shall thereafter accrue interest at the rate of one percent (1%) per month or the maximum rate permitted by law, whichever is less, from the due date to the date payment is received.
- 5.7 In the event any amount on any bill is in dispute, the disputed amount shall be paid under protest when due. Upon determination of the correct billing amount, the proper adjustment shall be paid promptly after the determination, with

interest accrued at the rate of one percent (1%) per month or the maximum rate permitted by law, whichever is less, computed from the date payment is received.

- 5.8 All billings and payments mailed by Seattle to NCPA shall be addressed to:

Northern California Power Agency
Attention: Treasurer - Controller
180 Cirby Way
Roseville, CA 95678

- 5.9 All billings and payments mailed by NCPA to Seattle shall be addressed to:

Seattle City Light
Attention: Manager, Resource Administration
1111 Third Avenue, Suite 420
Seattle, WA 98101

ARTICLE VI

AUTHORIZED REPRESENTATIVE

Each Party shall specify its Authorized Representative for purposes of this Agreement within thirty (30) days of the effective date of this Agreement.

ARTICLE VII

RELEASE AND INDEMNIFICATION

NCPA and Seattle will perform their respective services under this Agreement as independent contractors in accordance with their own methods, this Agreement, and applicable laws and regulations. Each Party releases the other from liability for loss or damage to its electric system and from all other damages arising out of or in connection with the other's performance of this Agreement except damage directly resulting from the other Party's failure to make capacity or energy available in accordance with the provisions of this Agreement. Each Party, as indemnitor, shall indemnify the other against and hold it harmless from any and all liability for damages or injuries to Third Parties, or damage to the property of Third Parties, resulting from, or arising out of the performance of this Agreement by the indemnitor. None of the indemnity and hold harmless provisions contained in this paragraph shall apply to injuries or damage resulting from the negligent or willful conduct of the indemnitee or the indemnitee's agents, or independent contractors who are directly responsible to said indemnitee. Upon demand, the indemnitor will reimburse the indemnitee for any costs incurred by the indemnitee in defending any claim or action filed by such third person.

ARTICLE VIII

ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other.

ARTICLE IX

VENUE

The Parties agree that the venue of any action which may arise out of this Agreement shall be either the United States District Court for the Western District of Washington, or the United States District Court for the Eastern District of California.

ARTICLE X

NOTICES

10.1 Formal Notices Any notice, demand, information, report or item otherwise required, authorized, or provided for in this Agreement shall be given in writing, except as provided pursuant to Section 10.2, and shall be deemed properly given if (i) delivered personally, (ii) transmitted and received by telephone facsimile device and confirmed by telephone, or (iii) sent by United States Mail postage prepaid, to the persons specified below:

(1) To NCPA:

General Manager
Northern California Power Agency
180 Cirby Way
Roseville, Calif. 95678

(2) To Seattle:

Director of Power Management, Power Resources Branch
Seattle City Light
1111 Third Avenue, Suite 420
Seattle, WA 98101

10.2 Routine Notices All notices of a routine character in connection with service under this Agreement shall be given in such a manner as the Parties may agree from time to time, unless otherwise provided in this Agreement.

- 10.3 Changes of Notice Recipients Either Party may change the designation or address of the person who is to receive notices on this behalf by giving the other Party notice thereof in the manner provided in Section 10.1.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

NORTHERN CALIFORNIA
POWER AGENCY

By: _____
General Manager

(Seal)

THE CITY OF SEATTLE
CITY LIGHT DEPARTMENT

ATTEST:

By: _____
Comptroller

By: _____
Superintendent